Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPEAL NO. 26 OF 2015
IN
COMPANY APPLICATION NO. 302 OF 2013
IN
COMPANY PETITION NO. 43 OF 2004

Club Cabana Recreations Private Limited and Another. …Appellants

Versus

Tresorie Traders Private Limited and others. …Respondents

Mr. Atul Rajadhyaksha, Senior Advocate, *with Mr. Sagar Ghogre, Mr. Aditya Khandeparkar, Mr. Rhishikesh Bidkar, Ms. Apurva Gupte, i/b Hariani & Co., for the Appellants.*

Mr. Chirag Mody, *Ms. Teresa Daulat, Suvarna Ambra and Raksha Thakkar, i/b M/s Divya Shah & Associates, for Respondent No.1*

Mr. F. E. DeVitre, Senior Counsel, *with Ms Hemlata Jain, Mr. Raghav Gupta, i/b M/s Wadia Ghandy & Co for Respondents Nos. 2, 3 and 4.*

Mr. Karl Tamboly, *a/w Ms. Smita G., i/b Sangeeta Lanjewar, for the Applicants, Intervenors in CAAL/1/16.*

CORAM: G.S. PATEL, J
DATED: 5th August 2016

PC:-

1. In this dispute, I am for the present leaving aside and not considering Company Application (L) No.1 of 2016. This is filed by seven Applicants, who are part of what I will call the Sandeep Raheja Group. The only reason this application is filed is because Mr. Raheja is at daggers drawn with both his sisters, one of whom, Ms. Sonali Arora, is in control of Respondent No.1, Tresorie Traders Private Limited. Mr. Raheja holds a fractional shareholding in Tresorie Traders. The dispute between Mr. Raheja and Ms. Arora pertains to the estate of their father, Gopal L. Raheja, and companies and entities within the Gopal Raheja Group. Mr. Tamboly on behalf of Mr. Sandeep Raheja makes a submission that his client does not fully trust Ms. Arora and Tresorie Traders to "properly" defend the proceedings brought by the Appellants, two Companies that are part of the Rajan Raheja Group. This Company Application for impleadment will, because of the order that I propose to pass today, be made before National Company Law Tribunal ("**NCLT**") if necessary. The NCLT will deal with it on merits. I make no observations about the maintainability of any such application for impleadment before the NCLT and leave all contentions open on all sides.

2. The dispute is really between the Appellants, two companies of the Rajan Raheja Group, and the 1st Respondent, Tresorie Traders Private Limited, a compnay of the Gopal Raheja Group. Respondents Nos. 2, 3 and 4 are three members of the Chandru Raheja Group. The challenge in this Company Petition under Section 10-F of the Companies Act 1956 is to the order dated 27th June 2014 at Exhibit "A1".[1] To cut a long and extremely tedious

1. Appeal Paperbook, *pp.* 42–52.

story short, the application before the Company Law Board on that day was to vacate its order passed several years earlier on 27th July 2004.[2]

3. The order of 27th July 2004 requires some background. There were already disputes between the parties. These date back to 2002, when Company Petition No.64 of 2002 was filed by Tresorie Traders and others against one Asiatic Properties Limited ("**Asiatic**") under Sections 397 and 398 of the Companies Act 1956 alleging oppression and mismanagement. Asiatic owns some immovable properties in Bangalore. The Company Petition under Sections 397 and 398 brought no direct challenge to any sale or disposal of these properties. That challenge arose later in Company Application No. 63 of 2003. An order was passed in that Company Application. That order was challenged in an Appeal that came to be withdrawn. It seems that thereafter Company Application No. 17 of 2006 was filed and that this resulted in an order dated 3rd May 2012 by which a challenge to the transfer of title to those properties from Asiatic to the two present Appellants was rejected by the Company Law Board. A company from the G.L. Raheja Group, Seacrust Properties Private Limited (incidentally one of the Applicants seeking intervention or impleadment) has challenged the 3rd May 2012 order in Company Appeals No. 34 of 2015 and 51 of 2015, both of which are pending in this Court. In the meantime, Tresorie Traders filed Company Petition No.43 of 2004 seeking reliefs under Sections 247 and 250 of the Companies Act 1956, for an order directing an investigation into the affairs of the Appellant

2. Appeal Paperbook, *p.* 112.

Companies (i.e., the two Rajan Raheja Group Companies to which the Bangalore properties were transferred.)

4. On 26th July 2004, the Company Law Board heard all concerned in Company Petition No. 64 of 2002, the oppression and mismanagement Petition against Asiatic. What happened the next day is exceedingly peculiar. Tresorie Traders 'mentioned' its Company Petition No. 43 of 2004 (its application for investigations and reliefs under Sections 247 and 250). It did so without notice and without service of the Company Petition. There was no apparent reason for it to have have done so. Certainly there does not seem to have been kind of urgency that would allow any judicial authority, on any principle of propriety, to proceed with an application made *ex parte* in this fashion. Indeed, even the order that came to be passed on 27th July 2004 notes the impropriety of the application before it. The order needs to be reproduced in full.

"**ORDER**

> Petition Mentioned. In all fairness the matter should have been mentioned when connected matter was heard yesterday when the other side was represented. Nonetheless, **since ordering the maintenance of status quo in regard to the shareholding in the Company would not prejudice anyone**, I direct that the **status quo regarding the shareholding** in R-1 and R-2 Companies should be maintained as of date **as also the assets of these Companies**.
>
> Respondents to file their replies to the Petition by 5/9/2004 and rejoinder to be filed by 13/09/2004. The

Petition will be heard on 17/09/2004 along with C.P.64/2002.

Petitioners to serve a copy of this Order along with copies of the Petition on all Respondents forthwith.

Sd/-

S.Balasubramanian
27/7"

5. Here, the Company Law Board accepts that the mentioning *ex parte* on the day following a hearing when all were present was improper and that on 27th July 2004, the day the matter was mentioned, none of the Respondents to Tresorie Traders' Sections 247/250 Petition were presented. They could not have been; they had no notice of any such application. Secondly, it is to be noted that the application seems to have been for an order of maintenance of *status quo* – a phrase that lends itself to variety of meanings, and often means nothing at all – in relation to the shareholding of the company. Mr. Rajadhyaksha for the Appellants points out that as far as the assets of the Company are concerned, there is not even a prayer in that regard in relation to those assets. There is not even an averment about those assets in that Petition. Yet the Company Law Board on the footing that the ordering or maintaining of "status quo" in regard to the shareholding would not prejudice anyone, directed a *status quo* to operate not only in respect of the shareholding of the unserved Respondents (and to whom no notice had been given) but also in respect of the assets of those Respondent-companies. As the extract above shows, the order itself indicates that the Respondents had not even been served with that Sections 247/250 Application on that date.

6. Then, as I have noticed, the order of 3rd May 2012 intervened and this in itself spoke of and dealt with a challenge to the disposal of the immovable assets, viz., the Bangalore properties. I would imagine that it is axiomatic that the 3rd May 2012 order would, if for no other reason then by necessary implication, operate to render the *status quo* order as regards the assets as having been set aside or at least no longer operative, irrespective of whether it said so or not. The two orders were irreconciliable – one, of 27th July 2004, ordering a status quo in regard to some immovable properties (as assets), and the other, of eight years later, 3rd May 2012, dismissing a challenge to the disposal or transfer of those very immovable assets. Evidently, the later order would prevail.

7. The Appellants moved the Company Law Board and sought to vacate the 27th July 2004 order. Various grounds were taken. The Company Law Board ultimately concluded that the application was without merit and dismissed it. Hence this Appeal.

8. Mr. Mody for the Tresorie Traders argues that there is no call for interference since the 27th July 2004 order has continued for twelve years. The Appellants have never challenged it. They have not sought a recall of it at least still the impugned order of 27th June 2014.

9. I believe Mr. Mody is in error here. The question is not only of what it is that a Court or judicial authority has done, but perhaps more importantly, how it has gone about doing it. To say that the 27th July 2004 order leaves much to be desired is possibly a considerable understatement. It leaves everything to be desired. It should never have passed an order of *ex parte* on an unserved party to whom no notice of the application was given. Even the ordinary rules for the grant of any order of injunction under Order 39 of the Code of Civil Procedure require that notice be given. Notice is the norm, *ex parte* without notice is the exception. Where a Court is asked to proceed *ex parte*, there must be cogent reasons set out in the application for so moving. The Court must apply its mind to these reasons. The Court must record its satisfaction as to the sufficiency of those reasons and must, in particular, find that the purpose of the order sought, usually an injunction, would be defeated by the delay involved in granting notice. There is no such finding in the order of 27th July 2004. There could not have been, on the facts that present themselves from the order itself. Further, given that the order is without notice, it ought to have been limited in time and could not have been kept open-ended, running indefinitely. That kind of order continuing an injunction or a restraint and directing the completion of filings, is usually an interim order, made after notice and after hearing parties. When an *ex parte* restraint is granted, liberty must be reserved to the affected parties to move. These are all well-established principles in the grant of ad-interim orders. On these grounds alone, that order ought to have been set aside for the asking. But the problems do not stop at that. What the 27th July 2004 order does is not, as Mr. Modi suggests, merely "mould a relief". It creates out of thin air a wholly new relief, one that was never sought, for which there is no prayer, and which is wholly unsupported by any pleading. There is not a mention of the assets of the Appellant Company in the Company Petition No. 43 of 2004 when this order was taken. Finally, and perhaps most disturbingly, is the observation of the Company Law Board itself that the application ought to have been made a day before. It said this because the previous day all parties were in fact before the Company Law Board. If that be so, then the Company Law Board ought simply to have directed Tresorie Traders to give notice of this application, serve a copy of Petition and move thereafter.

10. Then there is this question of ordering a '*status quo*'. The phrase or expression means the existing state of affairs. This is an abbreviation of an abbreviation: the nominal form of the Latin prepostional phrase, *in statu quo*, meaning, literally, "in the state in which"; and that is a contraction of the original "*in statu quo res erant ante bellum*", meaning "in the state in which things were before the war". Therefore, to "maintain the *status quo*" is to keep things as they presently are. The related phrase "*status quo ante*" of course implies a reversion to a previous state of affairs. It follows, therefore, that when we speak of a *status quo*, an existing state of affairs, that state of affairs must be known, and it must be known with a sufficient degree of exactitude. To merely order a *status quo* without knowing or being shown what that *status quo* might be is always a risky affair. An order of *status quo* is an order of suspended animation. It might, in a given case, affect a transaction that is nearly complete. Should such a transaction be permitted to go through or should it also be held in abeyance is a matter to which a Court can and should direct its attention. A court may permit some transactions and restrict others. Therefore, to order a *status quo* in, as it were, the abstract, sans information, sans notice and sans hearing is something that should be reserved for only the most palpable and apparent cases, those where no further discussion is necessary. To issue such an order only because "it will not cause any prejudice to anyone" is most improper; it well might, and that can only be known if the adjudicating body hears the other side. I notice, too, that there is absolutely no finding in this order of the Applicant, Tresorie Traders, having made out a *prima facie* case; no consideration of the balance of convenience; and no consideration of the possible irretrievable prejudice.

11. Therefore, when asked to set aside this order of 27th July 2004, no further enquiry was at all necessary. Mr. Mody says that these grounds are now being urged by Mr. Rajadhyaksha first time in the Appeal and that they were never taken before the Company Law Board in the C.A. No. 302 of 2013 filed by the Applicants to vacate the 27th July 2004 order. I do not see that this will carry Mr. Mody any distance at all. This is something that stares one in the face. The Company Law Board had other reasons that were canvassed before it, but underlying all of these was the question of maintenance or sustainability of the 27th July 2004 order on its face. There is also the fact, as Mr. Rajadhyaksha points out, that Section 250 of the Companies Act does not even deal with assets but only with shares. He makes the point that it is unclear how an application under Sections 247/250 can even be sustained as an independent application without an underlying substratum in the form of a substantive Company Petition under Sections 397 and 398 of the

Companies Act alleging oppression and mismanagement. There is considerable force in this argument. The Company Law Board (now the NCLT) cannot and will not order investigations into companies just for the sake of it, or merely for the asking. Those investigations are directed to a purpose. That purpose is to be provided by some suitably framed and worded underlying Petition. All of this was enough to establish that the 27th July 2004 order was on the face of it prejudicial. The order of 27th June 2014 in this Company Appeal, in my view, cannot be sustained. The application before the Company Law Board ought to have been allowed. The 27th July 2004 order had to have been set aside. The Company Law Board could have directed the Applicant to renew its application now that all had notice and could have proceeded to consider this on merits. Not to have done so is a clear error of law. In my view, given the manner in which the order of 27th July 2004 was passed and the manner in which the impugned order of 27th June 2014 has been passed there is no room for doubt that these orders are perverse. They could not properly have been passed in the manner suggested. The order of 27th July 2004 is not one that could have been passed in such circumstances and on such a petition.

12. The order 27th July 2004 survived at least till 3rd May 2012. Today, however, that question of the intervening time gap is irrelevant. Even without addressing the question of the impact of the 3rd May 2012 order on the 27th July 2004 order, it seems to me clear that the latter cannot possibly be sustained.

13. I dispose of the present Company Appeal in the following terms.

(a) The impugned order dated 27th June 2014 is set aside.

(b) As regards the assets and shareholding of the Appellant Companies (the 1st and 2nd Respondents before the Company Law Board (now the NCLT)), until 31st August 2016, no further third party rights will be created nor will those shareholding or assets be alienated. This direction is necessary only because of the longevity of the 27th July 2004 and for no other reason.

(c) By 31st August 2016, the 1st Respondent to this Appeal, Tresorie Traders Private Limited, shall be at liberty to file an appropriate application after notice to all before the NCLT and obtain suitable orders if it is able in regard to the shareholding and assets of the two Appellants. That application will be decided on its own merits uninfluenced by either the order of 27th July 2004 or the impugned order of 27th June 2014.

(d) No application is to be made by Tresorie Traders Private Limited to the NCLT to extend the present order or the order of 27th July 2004, nor will the NCLT grant any such extension, even if it is made, and especially not on the ground of convenience of counsel. No such application is to be sought by consent either. The NCLT in deciding any fresh or renewed application made by Tresorie shall do so without regard to the fact that Seacrust Properties Private Limited has filed two Appeals challenging the order of 3rd May 2012.

(e) If no order is obtained by 31st August 2016, the temporary restraint against the two Appellant companies will automatically come to an end and will stand released or lifted as of midnight on 31st August 2016.

14. The Company Appeals are disposed of in these terms with no order as to costs.

15. I make it clear that I have expressed no opinion on the merits of the applications filed by Tresorie. I have only addressed myself to the manner in which the orders were passed and nothing further. Therefore, in considering Tresorie's renewed or revived application, all contentions are expressly kept open.

16. I also make it clear that when I speak of the Respondents before the NCLT being given notice, I mean at least four clear working days' notice and nothing less. The NCLT is requested to dispose of any such application within not more than eight weeks from the date this order is brought to its attention. Liberty to the Appellants to place this order before the NCLT.

17. By way of clarification Mr. Sandeep Raheja and his clutch of companies and entities will be entitled to apply for intervention or impleadment.

(G. S. PATEL, J.)